

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
)	

**STANDING ROCK TELECOMMUNICATIONS, INC.
AMENDED REQUEST FOR LIMITED WAIVER AND EXTENSION OF
MOBILITY FUND PHASE I PUBLIC INTEREST OBLIGATIONS**

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TABLE OF CONTENTS

Summary.....	ii
I. Introduction and Background.....	3
II. Consecutive, Unexpected Delays with Construction and Drive Testing Necessitate and Justify a Waiver and Brief Extension of Time.....	6
III. Grant of the Requested Limited Waiver and Extension of Time Is Warranted and Would Serve the Public Interest	11
A. Good Cause Exists for Grant of the Requested Limited Waiver and Extension of Time.....	12
B. Special Circumstances Warrant Deviation from the Commission’s Rules to Extend the Deadline for SRT To Complete Construction and Drive Testing.....	14
C. Strict Compliance Is Contrary to the Public Interest and Would Cause Undue Hardship.....	15
IV. Conclusion.....	17

Summary

Standing Rock Telecommunications, Inc. (“SRT”) is a tribally owned telecommunications provider serving the Standing Rock Sioux Reservation (“Reservation”), which spans 2.3 million acres across the vast flatlands of North Dakota and South Dakota. It is an understatement to identify this part of the country as rural. The population density on the North Dakota side of the Reservation is 3.7 persons per square mile, but only 1.7 persons per square mile on the South Dakota side. While the majority of the Reservation has landline voice service, where terrestrial broadband service is available it is either very expensive or a subpar service. Until SRT built its fourth generation (“4G”) mobile wireless network, almost the entire Reservation had no mobile wireless coverage, with the narrow exception of the eastern side near the Missouri River, where previously there was only limited mobile wireless coverage from two national service providers.

Poverty and unemployment rates on the Reservation are many times higher than the national average. Economic opportunities on the Reservation are limited and there is little hope for improving the economic outlook without a broadband connection to the world. Fortunately, SRT now provides hope through the advanced mobile wireless voice and broadband services it offers over the 4G network it built after being awarded approximately \$3.3 million in Mobility Fund Phase I (“MFI”) support to construct a network covering over 1,291 previously unserved road miles.

While the 4G network is fully constructed now, SRT experienced consecutive, unexpected delays that caused it to be about six months behind the required MFI schedule for completion of the network construction and drive testing. The 4G network that SRT built, however, covers a far greater percentage of the previously unserved road miles than the MFI’s minimum requirement. Having completed the network construction and having demonstrated compliance with the MFI coverage requirements, SRT is requesting the appropriate final

disbursement of the MFI funding it was awarded and a limited waiver and extension of the MFI public interest obligations so that such final disbursement may be made.

There is good cause to grant the requested relief. The public interest will be well served by ensuring that SRT is reimbursed for constructing the 4G network that has accelerated the deployment of mobile broadband services to as many road miles as possible in unserved areas, and thereby enabling SRT to continue providing advanced mobile wireless services over the 4G network built on the Reservation. Grant of the requested relief also will help the Commission meet its goal of facilitating economic development on reservations and ensuring that tribes have adequate access to advanced communications services. Denial of the requested relief will undermine SRT's ability to continue providing these critical communications services and result in loss of telecommunications services to the Reservation, and would be contrary to the public interest.

SRT worked diligently to complete its 4G network as soon as possible, despite the delays it encountered, and SRT respectfully requests a limited waiver of the Commission's rules and an extension of the deadline for completing the MFI public interest obligations so that the Universal Service Administrative Company can issue to SRT the appropriate final disbursement of MFI support. Granting this relief will fulfill the Commission's mobile broadband expansion goals.

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Standing Rock Telecommunications, Inc. (“SRT”), pursuant to Section 1.3 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”),¹ hereby amends its request for a limited waiver and extension of the three-year deadline for SRT to construct a fourth generation (“4G”) network and submit drive test data reports for the census tracts for which SRT was a winning bidder in Auction 901 for Mobility Fund Phase I (“MFI”) support.² Specifically, SRT requests that the Commission waive Sections 54.1006(b) and (c) of the rules and extend the construction and applicable reporting deadline until June 30, 2017, a little more than six months from the December 24, 2016 deadline for SRT to construct and report coverage of its 4G network.³ As explained in greater detail herein, SRT has completed network construction and successfully deployed 4G services to cover far more than 75% of the previously unserved road miles in all four of the census tracts for which SRT was authorized to receive MFI

¹ 47 C.F.R. § 1.3.

² This amendment supersedes and replaces entirely the amended request submitted January 19, 2018.

³ See 47 C.F.R. §§ 54.1006(b) & (c).

support.⁴ SRT also has submitted the Form 690 to the Universal Service Administrative Company (“USAC”) requesting final payment of the MFI funds awarded for all four census tracts according to the final percentage of road miles covered. USAC has verified SRT’s coverage as meeting and exceeding coverage to at least 75% of the previously unserved road miles in all four census tracts.⁵

SRT respectfully requests a brief extension of the December 24, 2016, performance deadline for the four census tracts, until June 30, 2017, when SRT submitted drive test data for all four census tracts.⁶ As explained herein, there were a number of factors beyond SRT’s control that resulted in construction and drive testing delays. In summary, SRT encountered delays in obtaining necessary 4G equipment from vendors and also delays in receiving that equipment and having it installed due to protesters outside the Reservation obstructing delivery and creating an intimidating environment. SRT’s installation of the 4G equipment also was hindered by significantly higher than average snowfall during the 2016-2017 winter season. Drive testing the census tracts could not be performed until after installation of the 4G equipment was completed and snow had melted, which was in late spring 2017. SRT also encountered difficulties with the drive testing equipment and process, which resulted in the need for more time to complete drive test reports. Despite these delays, SRT was able to complete construction

⁴ The census tracts and corresponding study area codes (“SACs”) for which SRT was awarded MFI support are: (1) T38085940900, SAC 388007 in North Dakota; (2) T38085940800, SAC 388008 in North Dakota; (3) T46031941100, SAC 398001 in South Dakota; and (4) T46031941000, SAC 398002 in South Dakota.

⁵ USAC has confirmed that SRT covered 94.58% of previously unserved road miles in census tract T38085940900; 91.22% of previously unserved road miles in census tract T38085940800; 81.81% of previously unserved road miles in census tract T46031941100; and 99.25% of previously unserved road miles in census tract T46031941000.

⁶ SRT subsequently submitted an amended drive test report with updated information for census tract T46031941100 (SAC 398001) on July 22, 2017.

and submit drive test data for all four census tracts by June 30, 2017, approximately only six months beyond the MFI three-year deadline for a 4G network. Grant of this waiver request is critical to SRT's ability to own and operate essential communications infrastructure that is needed to protect the health and safety of Tribal residents, to spur local economic development, to preserve Tribal language and culture, and to further the education of consumers through distance education programs.

It is critical that the FCC disburse the MFI support to SRT to ensure that SRT can continue to provide mobile voice and broadband services on the Standing Rock Sioux Reservation ("Reservation" or "Standing Rock Reservation"), an area that has been otherwise lacking in mobile and broadband services.⁷ Granting a limited waiver of the MFI public interest obligations to allow a roughly six-month extension of the 4G construction deadline so that SRT can receive final payment of the MFI support it was awarded will serve the public interest. Moreover, granting the requested waiver and extension is consistent with precedent and the Commission's "longstanding policy of promoting Tribal self-sufficiency and economic development and of helping ensure that Tribes have adequate access to communications services."⁸

I. Introduction and Background

SRT is a telecommunications carrier that is wholly owned by the Standing Rock Sioux Tribe ("Sioux Tribe" or "Tribe"). The Tribe established SRT in 2010 to provide the basic

⁷ Tribal residents in and near Fort Yates, the county seat and location of the Tribe's headquarters, and in a portion of the western half of Sioux county have access to fiber broadband service, but the remaining area of the Reservation's 2.3 million acres has subpar landline broadband connectivity or no broadband connectivity. In west Corson county SRT's 4G mobile wireless network is the best option for broadband service.

⁸ *SRT ETC Expansion Order* at 1, citing *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080–81 (2000) ("*Tribal Policy Statement*").

telecommunications infrastructure that was lacking on the Standing Rock Reservation, and SRT launched mobile service that same year. In 2010, SRT was designated as an eligible telecommunications carrier (“ETC”) in certain wire centers within the boundaries of the Reservation.⁹ In 2011, SRT’s ETC designation was expanded throughout the Reservation.¹⁰

The Standing Rock Sioux Tribe is a federally recognized Native American tribe having approximately 9,000 members. The Reservation encompasses over 2.3 million acres of land in North Dakota and South Dakota. With a population of approximately 8,500 people, the population density on the Reservation is approximately 3.7 persons per square mile in the North Dakota portion of the Reservation and 1.7 persons per square mile in the South Dakota portion of the Reservation.

Unfortunately, the reality of Tribal lands that are extremely rural is that they generally lack critical infrastructure – roads, water, sanitation, and telecommunications. Lack of infrastructure almost always translates into high unemployment, poverty, and comprehensive economic and social challenges.

The Standing Rock Reservation is no different in this way from other extremely rural Tribal lands. The Reservation’s 2.3 million acres is a land of buttes and vast flatlands. Constructing an advanced communications network in this part of North Dakota and South Dakota has many challenges. Roads are scarce and often they are gravel or dirt roads. Winters

⁹ See *Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Area*, Memorandum Opinion and Order, WC Docket No. 09-197, DA 10-1601 (rel. Aug. 24, 2010).

¹⁰ See *Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Area; Petition for Reconsideration of Standing Rock Telecommunications Carrier on the Standing Rock Sioux Reservation*, Memorandum Opinion and Order on Reconsideration, WC Docket No. 09-197, FCC 11-102 (rel. June 22, 2011) (“SRT ETC Expansion Order”).

can be harsh and lengthy, limiting the construction season. The two counties encompassing the Reservation – Sioux County and Corson County – are ranked among the top 10 poorest counties in America.¹¹ Unemployment on the Reservation has increased to 79%, and the poverty rate on the Reservation is 43.2%, almost three times higher than the national average.¹² The need for a modern mobile wireless network and a viable provider of mobile voice and broadband services could not be more clear or more dire.

To help address the lack of telecommunications services on the Reservation, SRT participated in MFI Auction 901, and on December 23, 2013, SRT was identified as a winning bidder authorized to receive \$3,320,527.21 in MFI support to cover over 1,291 previously unserved road miles through construction of a 3G wireless network in four census tracts within the Reservation – two in North Dakota and two in South Dakota.¹³ The two-year deadline for construction of the 3G network was December 24, 2015.

On December 24, 2015, SRT requested an extension of the 3G construction deadline until June 30, 2016.¹⁴ On June 20, 2016, SRT requested that the FCC modify SRT's MFI project

¹¹ See Lee, Trymaine, "Geography of Poverty – Route 4, No Man's Land: The Last Tribes of the Plains," MSNBC, <http://www.msnbc.com/interactives/geography-of-poverty/nw.html>. Indeed, Corson County is in the top three of the nation's poorest counties. See Lengerich, Ryan, "Nation's top three poorest counties in western South Dakota," Rapid City Journal (Jan. 22, 2012) http://rapidcityjournal.com/news/nation-s-top-three-poorest-counties-in-western-south-dakota/article_2d5bb0bc-44bf-11e1-bbc9-0019bb2963f4.html.

¹² *Id.*

¹³ See Public Notice, *Mobility Fund Phase I Support Authorized For 222 Winning Bids*, DA 13-2464 (Dec. 23, 2013); see also Public Notice, *Mobility Fund Phase I Auction Closes, Winning Bidders Announced For Auction 901*, DA 12-1566 (Oct. 3, 2012) ("SRT Award PN"). Initially, SRT contemplated completing the MFI projects as a 4G build but determined that it would have great difficulty obtaining and providing handsets that would work on a 4G LTE network at that time.

¹⁴ See *Connect America Fund, Universal Service Reform – Mobility Fund*, Standing Rock Telecommunications Request for Limited Waiver and Extension of Mobility Fund Phase 3 Deadline, WC Docket No. 10-90, WT Docket No. 10-208 (filed Dec. 24, 2015).

description to become a 4G network project, with a corresponding three-year construction deadline.¹⁵ The FCC granted this request on August 17, 2016, and established December 24, 2016 as the new construction deadline.¹⁶ On December 23, 2016, SRT requested an extension of the 4G construction deadline until June 30, 2017.¹⁷ SRT now amends and supplements that request to provide additional explanation and justification for the request.

II. Consecutive, Unexpected Delays with Construction and Drive Testing Necessitate and Justify a Waiver and Brief Extension of Time.

SRT accepted MFI funding in December 2013, to construct a 3G network to cover 1,291 previously unserved road miles on the Standing Rock Reservation in North Dakota and South Dakota. By the end of 2014, SRT believed that it had constructed at least 50% of its network for the 3G MFI projects. As was contemplated in the MFI rules, SRT needed to request the second disbursement of MFI funding because that funding was critical to SRT's ability to continue the construction of the projects. In January and February of 2015, SRT drove test the four SACs, and submitted the Form 690 reports requesting the second disbursement of MFI funding on February 25, 2015. Following those submissions, SRT worked with USAC to provide additional coverage information requested by USAC to demonstrate that SRT had provided coverage to at least 50% of the previously unserved road miles. SRT received the second MFI disbursement for SACs 398001 and 398002 in August 2015, and for SACs 388007 and 388008 in late November

¹⁵ See Letter Request to Marlene H. Dortch, Secretary, FCC, from Fred McLaughlin, Telecommunications General Manager, Standing Rock Telecommunications, Inc., regarding Standing Rock Telecommunications Inc. Mobility Fund Supplemental Filing, WT Docket No. 10-208 (filed June 20, 2016).

¹⁶ See Public Notice, *Revised Construction Deadline Approved For Recipients of Mobility Fund Phase I Support*, DA 16-937 (rel. Aug. 17, 2016).

¹⁷ See *Connect America Fund, Universal Service Reform – Mobility Fund*, Standing Rock Telecommunications Request for Limited Waiver and Extension of Mobility Fund Phase 3 Deadline, WC Docket No. 10-90, WT Docket No. 10-208 (filed Dec. 23, 2016).

2015. In December 2015, shortly after receiving the last of the second disbursements, SRT requested a roughly six-month extension until the end of June 2016, to complete the 3G network.¹⁸

Even prior to December 2015, SRT had deployed 4G LTE technology in some of the MFI project areas, but due to the lack of 4G handsets SRT had not widely deployed 4G technology. By early 2016, Standing Rock determined that the market had changed for the availability of 4G handsets that would work on the Reservation, which made mobile 4G technology viable for expanding broadband on the Reservation. SRT determined that a more efficient use of the MFI support and a more significant and valuable public interest benefit would be derived from completing its MFI projects as a 4G network build.¹⁹

In June 2016, SRT filed a waiver, requesting that it be permitted to convert its 3G MFI projects to 4G LTE. Without knowing if the waiver request would be granted, SRT moved forward anyway with plans to overlay additional portions of its 3G network with 4G technology. In July 2016, SRT ordered RF prediction maps for additional 4G sites. Following the FCC's grant of the waiver to convert its MFI projects to 4G on August 17, 2016, SRT diligently began construction to overlay two additional sites with 4G equipment. Soon after SRT started working to expand the 4G network, however, SRT began to encounter a number of delays with varying degrees of impact.

¹⁸ The economic situation of SRT is unlike that of most other telecommunications carriers. SRT's economics are tied to the economics of its owner, the Sioux Tribe, and the economics of the population it serves on the Standing Rock Reservation. All are challenged economically. On a reservation, building a broadband network without readily available funds, either through existing operations or other means, is like putting the cart before the horse.

¹⁹ SRT did not request any additional MFI funding as part of a conversion from a 3G network to a 4G network.

In September 2016, SRT discovered that the production of the 45-degree antennas it needed would be delayed. So as to not further delay the project, SRT ordered 65-degree antennas in October 2016 and received them in early November 2016. These antennas were promptly installed. Other problems with equipment also caused delays. For example, some LTE equipment ordered in December 2016 could not be delivered until early February 2017 because the equipment was missing critical software when it was received, requiring SRT's vendor to implement a software patch before the equipment could be delivered and installed.²⁰

In September, October, and November of 2016, the protests that had begun in the spring of 2016 against the Dakota Access Pipeline began to intensify near the Standing Rock Reservation, creating a difficult situation that delayed SRT's construction of the 4G network.²¹ At the peak of the protests it was reported there were as many as 10,000 people outside the Reservation at the protest camps on the northern side of the Reservation.²² The sheer number of protesters, pipeline company security personnel, and law enforcement personnel in an extremely rural area caused a number of problems that impeded SRT's construction of the network in the fall of 2016, extending into late winter 2017. The large number of protesters placed greater demand on SRT's wireless communications system, which necessitated that SRT quickly install additional point-to-point facilities that could handle the communications needs of protesters and others at the camps. As a small company with limited resources, SRT had to shift some of its

²⁰ See *infra*. n. 29.

²¹ The protests were not disbanded until late February 2017. See Rebecca Hersher, *Key Moments In The Dakota Access Pipeline Fight*, NPR, <https://www.npr.org/sections/thetwo-way/2017/02/22/514988040/key-moments-in-the-dakota-access-pipeline-fight>, Feb. 22, 2017 (“Key Moments”).

²² See Mayra Caevas, Sara Sidner, and Darran Simon, *Dakota Access Pipeline protest site is cleared*, CNN, <https://www.cnn.com/2017/02/22/us/dakota-access-pipeline-evacuation-order/index.html>, Feb. 23, 2017.

resources from work on the 4G network to setting up temporary networks to support the high demand for voice and data resources at the protest camps. The large number of protesters also made it nearly impossible for vendors and contractors – whose work on the towers and network usually required two or three consecutive days of work – to find any lodging. Lodging near the main roads entering the Reservation was booked continuously for months with all the protesters, reporters, security personnel, and law enforcement.

Unfortunately, the nature of the protest environment also impeded SRT's network construction. When the situation became uncontrollable in September 2016, North Dakota's governor activated more than 500 North Dakota National Guard members to aid law enforcement.²³ There were clashes between protesters and security personnel or law enforcement. Law enforcement or security personnel reportedly responded to protesters with pepper spray, rubber bullets, police dogs²⁴ and concussion cannons in order to force them from land on which the pipeline was being deployed.²⁵ Hundreds of protesters were arrested.²⁶ Law enforcement implemented road blocks on the main road into the Reservation on the North Dakota side, limiting entry onto the Reservation and questioning non-local traffic. This contentious situation caused vendors and contractors that SRT needed to travel to the Reservation to do work on the network to have concerns for their safety, and deterred them from coming to the Reservation.

²³ See *Key Moments*.

²⁴ See *What to Know*.

²⁵ See Justin Worland, *What to Know About the Dakota Access Pipeline Protests*, Time, <http://time.com/4548566/dakota-access-pipeline-standing-rock-sioux/>, Oct. 28, 2016 (“*What to Know*”). See also *Shots reportedly fired, 141 arrested at Dakota Access Pipeline protests*, Seattle Times, <https://www.seattletimes.com/seattle-news/environment/live-updates-from-the-dakota-access-pipeline-protests-oct-27/>, Oct. 27, 2016 (“*Shots Fired*”).

²⁶ See *What to Know* and *Shots Fired*.

The lodging issues and safety concerns ultimately caused delays in getting equipment and antennas installed on towers. In some instances vendors' safety concerns necessitated that SRT have equipment shipped to its consultant NewCore, in St. Cloud, Minnesota, and have NewCore deliver the equipment to SRT on the Reservation. But even NewCore's employees had concerns about their own safety. The challenges that vendors and contractors had in getting to the Reservation and the concerns they had about working on Reservation are exemplified by one situation encountered by a NewCore employee who was delivering some LTE equipment to SRT on February 1, 2017.²⁷ The NewCore employee was stopped by the state highway patrol at the road closure on the main road heading to Fort Yates, North Dakota on the Reservation. After some rough questioning from the officers about what the NewCore employee was transporting, and after many calls to many people to explain and verify the delivery and its purpose, the NewCore employee eventually was permitted to enter the Reservation, but only after being re-routed to an entrance point that was much further away.

Heavy snowfall in the winter of 2016-2017 also delayed construction and drive testing. By the time that SRT received the LTE equipment that NewCore delivered in February 2017, the Reservation had already received significantly higher than average snowfall for the 2016-2017 winter season.²⁸ It was only after the snow melted in April 2017 that SRT could complete the

²⁷ SRT had ordered the LTE equipment in December 2016, but had to have it shipped to NewCore, and NewCore had planned to deliver that equipment. When NewCore received the LTE equipment it was missing critical software, which required NewCore to perform a software patch before the equipment could be delivered to SRT on February 1, 2017, and then installed.

²⁸ On January 1, 2017, the Sioux County Commission declared a snow emergency because of great snow depth and drifting in November and December of 2016. On January 3, 2017, the Bismarck Tribune reported that "[t]he amount of snow in Bismarck is beating records. The total accumulation of snow so far this season — or Jan. 2 — is 53.1 inches. That is the most snowfall ever accumulated to date, according to Michael Mathews, a meteorologist at National Weather Service in Bismarck." Emerson, Blair, "Bismarck snow beats records," Bismarck Tribune, http://bismarcktribune.com/weather/bismarck-snow-beats-records/article_fa4fe9f4-46b4-5a30-

installation of the 4G LTE equipment at the two additional 4G sites and add a third 4G site,²⁹ and then begin drive testing the network for the final report to USAC. SRT conducted testing for the four SACs to demonstrate all miles covered over the course of about six weeks following the completion of deployment at the additional 4G sites. SRT had to re-drive many areas multiple times due to equipment malfunctions, encountered slow driving conditions on gravel and rutted dirt roads, and had problems with GPS location accuracy for pictures of roads that could not be driven.

On June 30, 2017, approximately six months after the December 24, 2016 deadline for completing the 4G MFI projects, SRT submitted its completed drive test results for the projects to USAC.

III. Grant of the Requested Limited Waiver and Extension of Time Is Warranted and Would Serve the Public Interest.

Pursuant to Section 1.3 of its rules, the Commission may waive any provision of the rules for good cause shown or where, due to special circumstances, deviation from a rule would better serve the public interest and the Commission's purposes than strict enforcement of the rule.³⁰ In SRT's case, (i) there is good cause to grant the requested limited waiver and extension of the December 24, 2016, deadline, until June 30, 2017, (ii) special circumstances warrant deviation from the rule, and (iii) strict enforcement would not serve the public interest. SRT constructed 10 sites to provide 3G coverage for voice service, and overlaid six of those sites with

9add-554b81b74ff0.html (Jan. 3, 2017).

²⁹ SRT had determined that an additional 4G site was needed to expand data coverage sufficiently. SRT ordered the necessary 4G equipment in April 2017, and received it in May 2017.

³⁰ See 47 C.F.R. § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972)).

equipment to provide 4G LTE coverage for broadband data service. Following the FCC's grant of SRT's request to convert its MFI projects from 3G to 4G, SRT encountered a continuous string of delays, but despite these delays SRT kept moving forward with the completion of its MFI projects in order to successfully construct a 4G LTE network with coverage that far exceeds the MFI minimum coverage requirement of 75% of previously unserved road miles. SRT should be appropriately compensated for this accomplishment and respectfully requests that the Commission grant the requested waiver to allow that. The public interest has been served by SRT's construction of a mobile voice and data network in an area that lacks basic communications infrastructure. The public interest is further served by reimbursing SRT for constructing that network so that SRT can remain viable and continue to operate, and provide reasonably priced mobile voice and data services in one of the country's most rural and economically challenged areas.

A. Good Cause Exists for Grant of the Requested Limited Waiver and Extension of Time.

The FCC's objective in establishing MFI was to "expand current and next generation mobile services to areas without such services today."³¹ Consistent with the Commission's MFI goals, SRT has been diligent in its efforts to meet its MFI commitment to deploy a 4G network throughout a large portion of the Standing Rock Reservation. Despite the delays, SRT only

³¹ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 at ¶ 359 (2011) ("*USF/ICC Transformation Order*").

needed about six additional months beyond the 4G deadline to complete construction of the 4G network and to complete drive testing of the four SACs.

There is good cause to grant the requested waiver and extension of time. SRT built a 4G network based on the same amount of MFI funding that it was awarded to build a 3G network. Residents on the Reservation, and roamers, will benefit tremendously from access to a broadband mobile wireless network where there was none previously. Granting the requested relief will also help ensure that SRT remains a viable provider of mobile voice and broadband services for an area that desperately needed mobile communications infrastructure and services to improve economic and social opportunities.

Granting the requested relief also will serve the public interest by advancing the Commission's policy to ensure that Tribes have access to communications services that facilitate economic development.³² The 4G network has been built, and SRT is providing mobile voice and broadband services, but SRT's ability to continue providing these critical services depends on final payment of the MFI support that it was awarded to build the network. The public will not be harmed by granting the requested relief. There is good cause for the Commission to grant a limited waiver and extension of the three-year construction and reporting deadline for all four SACs.

³² See *infra*, footnote 7. The Commission "has found that lack of telecommunications services is 'even more severe for Americans on rural Tribal lands' and that 'communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population.'" Letter from Roger S. Noel, Chief, Mobility Division, WTB, FCC, to Steve B. Sharkey, T-Mobile License LLC, DA 16-1429 (Dec. 21, 2016) ("T-Mobile MT/WY Waiver"). Notably, 41 percent of all Tribal citizens lack access to advanced telecommunications services. In North Dakota 80 percent of Tribal lands lack access to these services, while in South Dakota 32 percent of Tribal lands lack such access. See *2016 Broadband Progress Report*, 31 FCC Rcd 699, at 701, ¶ 4, and at 770, Appendix G (2016).

Grant of the requested relief will serve the public interest by facilitating the timely deployment of broadband services to tribal areas and is consistent with Commission precedent and practice.³³ The Commission has recognized that the challenge of deploying services in extremely rural, low density areas justifies a waiver or modification of the construction requirements to ensure that their underlying purpose – of promoting the timely deployment of service to rural areas – is served.

B. Special Circumstances Warrant Deviation from the Commission’s Rules to Extend the Deadline for SRT to Complete Construction and Drive Testing.

The Commission may waive any provision of the rules where, due to special circumstances, deviation from a rule would better serve the public interest and the Commission’s purposes than strict enforcement of the rule.³⁴ The FCC also may take into account considerations of hardship, among other factors, when determining whether to grant a waiver.³⁵

North Dakota and South Dakota are two of the largest and least populated states in the country and they are subject to harsh weather conditions.³⁶ The Reservation is in two of the poorest counties in the United States and suffers from unemployment and poverty rates that are many times higher than the national average. Without adequate infrastructure, such as the

³³ See *Leaco Rural Telephone Cooperative, Inc. and Pine Belt Cellular, Inc. Requests for Waiver of the Construction Deadline and Reporting Deadline Rules for Mobility Fund Phase I*, Order, 31 FCC Rcd 9001 (2016). See also T-Mobile MT/WY Waiver.

³⁴ See 47 C.F.R. § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972)).

³⁵ See *Wait Radio v. FCC*, 418 F.2d at 1159.

³⁶ See Letter from Roger S. Noel, Chief, Mobility Division, WTB, FCC to Robert Vitanza, AT&T Services, Inc., DA 17-63 (Jan. 18, 2017) (“AT&T Alaska Waiver”) (unique circumstances including sparse population density and difficult geographic and weather conditions justify modification of construction requirements). See also T-Mobile MT/WY Waiver. The geography, population, and weather conditions in North Dakota and South Dakota are similar to those in Alaska, Montana, and Wyoming.

mobile wireless communications network built by SRT, there is little chance to improve the economic situation on the Reservation.³⁷

As detailed herein, these special circumstances and hardships were significant factors causing delay in SRT's completion of its MFI projects, and they were largely outside of SRT's control. Despite the delays, SRT remained focused on bringing mobile voice and broadband to the Reservation and it remained dedicated to completing the MFI projects as quickly as possible so that residents on the Reservation could begin taking advantage of these services. The extension SRT seeks is a minor delay in the 4G construction schedule, but warranted in light of SRT's problems with vendors, pipeline protests, and extreme weather conditions. Acknowledging these delaying circumstances and granting the requested waiver will help SRT remain viable and capable of providing the services on the 4G network that it has already built.

C. Strict Compliance Is Contrary to the Public Interest and Would Cause Undue Hardship.

Strict enforcement of the requirements of Sections 54.1006(b) and (c) and a denial of SRT's requested limited waiver and extension of time would not serve the public interest. Absent the MFI support upon which SRT relied in designing and constructing its MFI projects, SRT could not afford to maintain the network or to continue offering mobile voice and broadband services over that network. A denial of SRT's waiver request would undermine SRT's ability to continue providing critical communications services to a highly rural area that was previously without communications services. This is not only contrary to the public interest,

³⁷ The eastern side of the Reservation near the Missouri River has limited mobile wireless coverage from two national mobile wireless service providers, but the vast remainder of the Reservation was wholly without any mobile wireless voice and broadband coverage until SRT built its 4G mobile wireless network.

but also contrary to the Commission's goals set forth in the *USF/ICC Transformation Order*,³⁸ and the *Tribal Policy Statement*.³⁹

SRT has expended considerable resources to plan, construct, and deploy its 4G network. Denial of the requested limited waiver and extension would not only financially penalize SRT by requiring repayment of all MFI funds disbursed, but also by requiring payment of the performance default amount,⁴⁰ resulting in further financial harm and hardship to SRT and the Tribe. Denial of the requested waiver and extension would not only leave SRT unable to maintain and operate the 4G network, but would have a devastating impact on SRT's overall financial stability and future viability, and ultimately a devastating impact on the residents of the Reservation. Such a result would be contrary to the public interest, and contrary to Congressional and Commission universal service and broadband deployment policies and goals.

³⁸ See *USF/ICC Transformation Order* at ¶ 359.

³⁹ See *infra*, footnote 7. See also, *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, Notice of Proposed Rulemaking, WT Docket No. 11-40, FCC 11-29 (rel. Mar. 3, 2011) (proposing additional steps to encourage the further deployment and use of spectrum for Wireless Radio Services over Tribal lands).

⁴⁰ See 47 C.F.R. § 54.1006(f) (requiring repayment of disbursed support and an additional performance default payment).

IV. Conclusion

SRT has served the public interest and the Commission's goals by constructing a 4G network and deploying mobile voice and broadband services to previously unserved areas in rural and Tribal areas of North Dakota and South Dakota. The delays that SRT encountered in completing the MFI projects by the deadline were beyond its control, but SRT worked diligently to complete the MFI projects as quickly as possible and has requested only a brief extension of time. For the reasons set forth above, SRT respectfully requests a limited waiver and extension of the 4G deadline until June 30, 2017, when SRT submitted drive test data to USAC for all four MFI projects, specifically census tracts T38085940900, T38085940800, T46031941100, and T46031941000. SRT also respectfully requests expeditious Commission action on this request.

Respectfully submitted,



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Counsel for

Standing Rock Telecommunications, Inc.

February 14, 2018

DECLARATION OF FRED McLAUGHLIN

I, Fred McLaughlin, do hereby declare under penalty of perjury that the foregoing is true and correct:

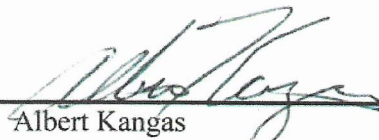
1. I am the General Manager of Standing Rock Telecommunications, Inc.
2. I have read the foregoing "Amended Request for Limited Waiver and Extension of Mobility Fund Phase I Public Interest Obligations." To the best of my knowledge, and upon information and belief, I believe the facts set forth therein to be true and correct.

Fred McLaughlin
General Manager
Standing Rock Telecommunications, Inc.
Date: 2/14/2018

DECLARATION OF ALBERT KANGAS

I, Albert Kangas, do hereby declare under penalty of perjury that the foregoing as related to the following statements is true and correct:

1. I am Chief Operating Officer and General Manager with NewCore Wireless LLC ("NewCore"), which is a consultant to Standing Rock Telecommunications, Inc. ("SRT").
2. NewCore provides consulting services to SRT. Between 2013 and 2017 NewCore provided consulting services to SRT related to SRT's construction of a 3G and 4G mobile voice and broadband telecommunications network on the Standing Rock Sioux Reservation ("Reservation") pursuant to SRT's award of Mobility Fund Phase I support ("MFI Project").
3. As part of NewCore's work related to the MFI Project, NewCore worked with vendors to obtain equipment and with contractors to arrange for network construction. From the spring of 2016 through the spring of 2017 NewCore had difficulty in getting equipment delivered to the Reservation and getting contractors to work on the network construction on the Reservation due to protests against the Dakota Access Pipeline, which were occurring outside but near the Reservation.
4. I have read the foregoing "Amended Request for Limited Waiver and Extension of Mobility Fund Phase I Public Interest Obligations" ("Amended Request"). I have personal knowledge of the facts relating to equipment delivery and contractor work for the MFI Project during the time period when protests were occurring outside the Reservation, as set forth in the Amended Request, and believe them to be true and correct.



Albert Kangas
Chief Operating Office and
General Manager
NewCore Wireless LLC

Date: 2/14/18